U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLAN HARRIS and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Jamaica, NY

Docket No. 98-525; Submitted on the Record;
Issued September 15, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant met his burden of establishing that he sustained an injury in the performance of duty.

On January 21, 1995 appellant, then a 49-year-old immigration officer, filed a claim for compensation alleging that he had injured his left shoulder, elbow, hip, knee, head, neck and back as a result a vehicular accident while in the performance of duty.

On September 18, 1995 the Office of Workers' Compensation Programs denied appellant's claim. On September 25, 1996 and October 20, 1997 the Office denied appellant's request for reconsideration.

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

Proceedings under the Federal Employees' Compensation Act[1] are not adversarial in nature and the Office is not a disinterested arbiter.[2] While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[3] The Board has stated that once the Office has begun investigation of a claim, it must pursue the evidence as far as reasonably possible.[4]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Richard Kendall*, 43 ECAB 790, 799 (1992).

[3] *Id.*

[4] *Leon C. Collier*, 37 ECAB 378, 379 (1986).

The Office's procedures provide that while an employee claiming compensation must show sufficient cause for the Office to proceed with processing and adjudicating a claim, the Office has the obligation to aid in this process by giving detailed instructions for developing the required evidence.[5] The Act requires the employing establishment to report to the Office any injury resulting in death or probable disability and to submit any further information requested by the Office. In addition to supplying evidence in its own behalf, the employing establishment is expected to aid the claimant in assembling and submitting evidence.[6]

In administering the Act, the Office must obtain any evidence necessary for the adjudication of the case, which is not received when the notice or claim is submitted. Thus, the Office is responsible for advising the claimant about the procedures involved in establishing a claim and requesting all evidence necessary to adjudicate the case.[7]

In the section in appellant's claim form reserved for a witness' statement, Holliston Edwards, appellant's supervisor, stated that he was a passenger in the vehicle on January 21, 1995 with appellant when it was hit by an airline truck "which caused damage to … (appellant) who was taken to JFK field medical by Port Authority for treatment." In a medical report dated October 22, 1996, Dr. Harold German, Board-certified in internal medicine, stated that he treated appellant on January 24 and 30, 1995, and noted appellant's injury history consistent with appellant's claim, noting that on January 24, 1995 appellant was symptomatic with headaches and fatigue, and that on January 30, 1995 appellant was symptomatic with right shoulder pain, blurring of vision and post-concussion syndrome. In an April 11, 1995 medical report, Dr. Ali E. Guy, appellant's treating physician and Board-certified in physical medicine and rehabilitation, stated that appellant had cervical and lumbar radiculopathy.

In the Office's September 25, 1996, denial of appellant's request for reconsideration, the Office noted that appellant had not submitted contemporaneous medical evidence and that a magnetic resonance imaging (MRI) scan had revealed preexisting degenerative disc disease.[8]

On September 30, 1997 the employing establishment notified the Office that the field medical center, which had treated appellant on January 21, 1995, declined their request to release medical information on appellant without a signed release form from appellant, but that the center indicated that it had been paid for services rendered in regard to appellant.[9] The Office, however, rather than advise appellant of the need to provide a release authorization to the

[5] Federal (FECA) Procedure Manual, Part 2, Claims -- *Development of Claims*, Chapter 2.800.3(a) (April 1993).

[6] Federal (FECA) Procedure Manual, Part 2, Claims -- *Development of Claims*, Chapter 2.800.3(b) (April 1993).

[7] *Id*., Chapter 2.800.3(c)(1)-(2).

[8] In response to this denial, appellant requested reconsideration and submitted the October 22, 1996 medical report from Dr. German as well as an August 26, 1997 medical report from Dr. Noah S. Finkel, who stated that he had treated appellant on March 6, 1996 for cervical strain.

[9] Although the medical center did not indicate when services were provided, it stated that it was paid on April 20, 1995.

medical facility, issued a decision on October 20, 1997 denying appellant's request for reconsideration.

With respect to the Office's development of this case, the Board finds that it failed to provide appellant with sufficient notice and opportunity to provide the specific contemporaneous evidence that it sought, that is, the medical evidence from the field medical center.[10] Instead, the Office issued a decision 30 days after notice that a release form was necessary denying appellant's reconsideration. With respect to the medical evidence, although Dr. German's medical report is unrationalized, it does raise an uncontroverted inference that appellant's conditions were related to the January 21, 1995 accident.[11] Further, the employing establishment noted in appellant's claim form that the facts as related by appellant were true.[12] Inasmuch as the Office failed to follow its mandated procedures in developing a claim, the Board will remand the case for further development. After such development of the record as the Office seems necessary, a *de novo* decision shall be issued.[13]

[10] The Office notified appellant regarding the kind of medical evidence it required on August 14, 1995. It was only with the issuance of the Office's September 26, 1996 decision that the phrase "contemporaneous medical evidence" was used. It was after this decision that appellant submitted Dr. German's medical report, noting medical treatment three days after the accident, which would appear to be a reasonable attempt to comply with the Office's request.

[11] *See John J. Carlone*, 41 ECAB 354 (1989) (finding the medical evidence submitted by appellant is sufficient, absent any opposing medical evidence, to require further development of the record).

[12] *See* the reverse side of appellant's CA-1 form wherein the agency checked a box noting its agreement with appellant's claim as well as appellant's supervisor's eye witness statement in agreement with appellant's related facts.

[13] *See Raymond H. Van Nett*, 44 ECAB 480, 483 (1993) (finding that the Office failed to complete evidentiary development in accord with its own procedures and Board precedent).

The October 20, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.[14]

Dated, Washington, D.C.
September 15, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] The Board notes that subsequent to the Office's October 20, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).